A Juſt Complaint OF THE OPPRESSED,

BECAUSE

Convicted, Fined & Diſtrained

EXCESSIVELY,

Unſummond & Unheard

In their own DEFENCE;

Upon the CLANDESTINE Evidence of

Concealed Informers,

In their Proſecution of the Peaceable People called **Quakers** for their **Religious Meetings.**

Examined by the **Law** of **God** and **Nations** on **Pregnant Inſtances.**

Humbly preſented to the Serious Conſideration of **Juſtices** and **Jurors.**

Ezek. 45. 9. *O Princes—Remove Violence and Spoil, and Execute Judgment and Juſtice.*

WE the Oppreſſed People before mentioned, do ſeriouſly declare our ſelves Agrieved and Injured by being Convicted and Fined unheard in *our* own defence, and without ſo much as having any Summons or Notice given *us* to make *our* appearance to anſwer before *our* Accuſers Face to Face before Conviction, or the Perſon Convicting; wherein we conceive we have not **Due Order of Law**, nor equal Right allowed us, according to the Law of God, and common courſe of Juſtice, uſage of *England*, and **Oath of Juſtices of Peace**, enjoyning the due Adminiſtration of *Equal Law, Juſtice, and Right to all the King's Subjects, Poor and Rich*, &c. To hear both parties, that the Perſon accuſed (or under Proſecution) may have Liberty to anſwer for himſelf, Plead and make Defence, before Judgment paſs, or Proceſs be awarded, or Iſſue, Is ſuch an Eſſential and Indiſpenſible point of Juſtice and equal Right, as cannot be diſperſed withal according to the **Oath of Juſtices**; and the contrary (*viz.* Judging perſons unheard) ranked among thoſe ways whereby Juſtice is (or may be) perverted. And is therefore by *Michael Dalton*, and others, termed **Precipitation**. See *Dalton's Country Juſtices*. fol. 4, and 5. Under the title of [**The firſt Ordeining of Juſtices of the Peace.**] the paſſage is this, *viz.*

"Juſtice may be Perverted ſeveral wayes, &c.——By Preci-
"pitation, or too much Raſhneſs; when they proceed Haſtily
"without Due Examination and Conſideration of the Fact, and
"of all Material Circumſtances, or **Without Hearing Both**
"**Parties**. For as one ſaith truly, *Qui aliquid ſtatuerit Parte in-*
"*auditâ alterâ æquum Licèt ſtatueris haud æquus eſt*. i. e. He that
"ſhall Judge or Determine a Matter, the one Party being Un-
"heard, although he ſhall Judge aright, yet is he not a Juſt Judge
"*Yea* (ſaith he) *God himſelf hath given us Preſidents of ſuch*
"*Deliberate Proceedings, as you may ſee in* Geneſis, *cap.* 3. *verſ.* 8.

Proving

Proving how God called our first Parents, *Adam* and *Eve*, into Examination before he past Sentence. And also had even the Serpent convicted of his offence before his Face, by the Womans Evidence, and thereupon told him the reason of his Punishment.

He quotes also, *Gen.* 18. 21. Which proves that before the Lord destroyed *Sodom*, he said, *I will go down and see, whether they have done altogether according to the Cry of it, and if not, I will know.* Also he quotes *Judges*, 19. 30. compared with Chap. 20. Verses, 3, 4, 7, 12, 13. Shewing that about the *Benjamites* forcing the *Levite's* Concubines that she died: The Children of *Israel* considered of the matter, took advice and counsel together, examined the *Levite*, saying, *Tell us how was this Wickedness?* And to the *Benjamites*, *What Wickedness is this that is done among you? now therefore deliver us the Men, the Children of* Belial, *&c.* And all this before they went out to battle against *Benjamin*.

To which may be added, it was contrary to the very Law and Justice of the *Romans*, to condemn Persons unheard in their own defence. The Apostle *Paul*, when Persecuted by the *Jews*, had liberty to answer for himself, before *Festus* and others of the *Roman* Governours, at *Cesar's* Judgment Seat. See *Acts* 21. 40. & 22. 1. *&c.* and Chap. 24. 10. and Chap. 25. 5, 7, 8, 10, 16. When the Chief Priests and Elders of the *Jews* desired to have Judgment against *Paul*, *Festus* answered them, *It is not the manner of the* Romans *to deliver any Man to die, before that he which is accused have the Accusers Face to Face, and have License to answer for himself concerning the Crime laid against him.* 'Tis contrary to the Law of God to convict or condemn Persons unheard. See *Deut.* 19. 17, 18. viz. *Both the Men between whom the Controversy is, shall stand before the Lord,* &c.—*And the Judges shall make diligent Inquisition,* &c.—

And *Nichodemus* said, *Doth our Law judge any Man before it hear him, and know what he doth?* John 7. 51. *Oh! it is the honour of Kings to search out a matter,* Prov. 26. 2. As that Prince and Just Judge said, *I was a Father to the Poor, and the Cause which I knew not I searched out, and I brake the jaws of the Wicked, and pluckt the Spoil out of his Teeth,* Job 29. 16, 17.

Against giving Judgment **without hearing the Party**, *Lord Chief Justice Cook* gives this Instance, *viz.* For *Hussey* the Chief Justice his request to King *Henry* the 7th, *That he would not desire to know their Opinions before hand in the Case of* Humphrey Stafford (that Arch Traytour) which the King accepted. Upon this Justice *Cook* addeth, *viz.*

"*For*

"*For how can they be Indifferent, who have delivered their Opinions*
"*Before-hand,* **without Hearing the Party,**
Cook 3 part "when a ſmall Addition or Subſtraction may al-
fol. 29. "ter the Caſe. And farther (ſaith he) How doth
"it ſtand with their **Oath**, who are ſworn, *That they ſhould well*
"*and Lawfully ſerve our Lord the King, and his People, in the Office*
"*of a Juſtice, and do* **Equal Law** *and* **Execution of Right**
"*to* **All** *his Subjects.* See *Cook.* 3 part fol. 29.

Object. *That the Juſtices Record made of the offence upon the Confeſſion of the party, or Oath of two Witneſſes, or notorious Evidence and Circumſtance of the Fact, ſhall to all Intents and Purpoſes be in Law taken and adjudged to be a perfect Conviction,* &c.

Anſw. 'Tis not ſaid, It ſhall be ſuch a Conviction without hearing the party accuſed, nor doth this make void the great point of *Equity* and *Juſtice, Of hearing the party charged before Judgement or Conviction,* but rather grants it as implyed. For,

1ſt. In the firſt place, the Confeſſion of the party is mentioned in order to Conviction, and to whom is this Confeſſion made but to the Juſtice convicting? and then the party muſt needs be heard.

2dly. The taking perſons aſſembled into Cuſtody (as the Act directs) it is to the intent they may be proceeded againſt according to the ſame *Act* of the 22 *Car.* 2. againſt *Conventicles*, fol. 10. 11. as the words of the *Act* are plain. But what need of taking them into Cuſtody to ſuch intent, if it were ſufficient to convict them in their abſence or unheard? However it is not reaſon to ſuppoſe a Statute Law is intended to make void the Juſtice of *Common Law*, in judicial Proceedings. Nor can it rationally excuſe ſuch Conviction of perſons unheard, to ſay there is liberty of Appeal, and Judicial hearing and Tryal allowed thereupon at *Quarter Seſſions*, for before that can be obtained the party concerned is Convicted, Adjudged, and ſo Condemned (as guilty) and brought under an Execution, his Goods and Chattels ſeized and diſtrain'd, and it has been the Lot of divers to be ſorely oppreſt and agriev'd, by the ſpoil, exceſs and damage in diſtreſs-making; and all this occaſion'd by a Conviction and Proceſs thereupon, the Oppreſſed being **Unheard** in their own defence. *Juſtices determining offences, &c. on a bare Information for the King*, by the

Stat.

Stat. 11. H. 7. c. 3. Lord *Cook* alſo ſeverely oppoſeth, in his reaſons for the repeal of the ſaid Stat. by one of the 1 H. 8. c. 6. Beſides divers Poor Men unable to be at the charge of Appeals, others ſo oppreſſed and ſpoiled by this kind of *precipitant Procedure*, as that they are diſabled from proſecuting any appeal, conſidering the loſs of time and charge.

And another great Evil, as well as Scandal to the Government, and Injury to the Subject, hath happened, as the conſequence of Convicting Perſons **Unheard. Informers** have given Informations upon *Oath*, notoriouſly falſe in Fact; againſt certain Perſons, to their great trouble and damage, neceſſitating their giving the Juſtices the trouble of divers Appeals at their *Quarter Seſſions*.

Againſt puniſhing Perſons before heard, take another Inſtance out of *Judge Cook*'s Inſtit. 2 pt. fol. 55. *viz.*

"The Philoſophical Poet *Virgil* doth notably deſcribe the "damnable and damned Proceedings of the Judge of *Hell*, *viz.*

"*Gnoſius hic* Rhadamathus *habet duriſſima Regna*,
"*Caſtigatq; auditq; Dolos Subigitq; fateri.*

"Firſt he Puniſheth, and then he Heareth, and laſtly Com-"pelleth to confeſs, and make and Marr Laws at his Pleaſure.

"Like as the *Centurion* in the Holy Hiſtory did St. *Paul*; for "the *Text* ſaith, *Centurio apprehendi Paulum iuſſit*,
"*et eum catenis ligari, et tunc interrogabat quis eſſet,* *Act.* 22. 24, 27.
"*et quid feciſſet.*

"But good Judges and Juſtices abhor theſe "Courſes. *Cook* 2 Part. Inſt. fol. 55.

Whereas in our late Convictions, there's commonly this paſſage, *viz.* *As well by the Oath of Two Credible Witneſſes, as by the notorious Evidence and Circumſtance of the Fact*, &c. To which we ſay, How can they be Credible Witneſſes, who are notoriouſly known to take upon them to be Common Informers for their own Intereſt, in part of the Fine? The Act againſt Conventicles, doth diſtinguiſh between Informers and Witneſſes; the Informers being only to give Information, or make diſcovery

of

of the Conventicles. The Witneſſes to give Teſtimony of the Fact done by perſons unlawfully aſſembled, as appears by the ſaid Act, 22. *Car.* 2. fol. 6. and 12 for ſuch Witneſſes as are aſſigned by Law and Juſtice are no parties; nor interreſſed Perſons; but ſuch as the Law renders Credible, as Sr. *John Fortſcue* (Lord Chancellor of England, in the Reign of King *Henry* the 6th) deſcribes them, *viz.*

"Not *Unknown Witneſſes*, *Hired Perſons*, *Poor Men*, *Vagabonds*, "*Unconſtant People*, or ſuch, whoſe Condition and Naughtineſs "is unknown; but ſuch as are Neighbours, able to live of their "own, of good Name and Fame, of Honeſt Report, *&c.*

'Tis by Evidence of ſuch Witneſſes that Jurors ought to be informed, Vid. Forteſcu *de laudibus legum Angliæ*, Chap. 26. pa. 60. 61. Chap. 28. page 63, 64.

And how can there be the notorious Evidence of the Fact in the abſence of the Convicting Juſtice, or when he was neither preſent at nor ſaw the Meeting againſt which Information is given?

We further complain of being injured and agrieved in that the Names of theſe pretended Credible Witneſſes, to wit, the Informers, are not inſerted in the Proceſs or Warrants for Diſtreſs, nor Indorſed upon them. Beſides, the Maſter *Informers*, employing other perſons for their Servants or Deputies to Proſecute, *&c.* and to make *Oath* againſt us under pretence of *Witneſſes*. And theſe proceed clandeſtinly & hiddenly againſt us, & their Names concealed, being not indorſed upon the Proceſs; which we alſo conceive is Illegal, as well as Injurious. See the *Statute* 18 *Eliz.* 5. §. 1. For Redreſſing of divers Diſorders in Common *Informers*, &c

"Be it Enacted, that every *Informer* upon any Penal Statute, "ſhall exhibit his ſuit in proper Perſon, and purſue the ſame only "by himſelf, or by his *Attorney* in Court. And that none ſhall "be admitted or received to purſue againſt any Perſon or Perſons "upon any Penal Statute, but by way of Information or Original "Account, and not otherwiſe. Nor ſhall have, nor uſe any "Deputy or Deputys at all, and that upon every ſuch Infor-

"mation, which ſhall be Exhibited, a ſpecial Note be made of "the very Day, Month, and Year of the Exhibiting thereof, "*&c.* And that upon every ſuch Proceſs, ſued out, ſhall be "**Indorſed**, as well the Partys Name, that purſued the ſame "as alſo the Statute, upon which the Information, in that behalf "made, is grounded.

Upon which *Shepherd* in his *Juſtice of Peace*, obſerves thus, *viz.*

"If any Clerk that receivs the Information, do not ſet down "the Day, Month, and Year of Exhibiting it, or not indorſe "upon the Proceſs, the Informers Name, and the Statute upon "which he goes, or make out Proceſs before this "be done; the Penalty of 40 s. is to be impoſed 18 *Eliz.* 5. "here, and if the Informer have his hand in this, "or take reward without licenſe of one of the Courts of Weſt-"minſter, or Compound without licenſe, or doth follow any "Suit by his Deputy, and not in his proper Perſon, or by his "Attorney in Court, he is to be put in the Pillory two hours in "a Market Town, made to pay 10 li. Fine, and be put out of "his office, *&c.* *Shepherds Juſtice of Peace*, 2 pt. p. 263, 225.

It appears that *Informers* legally Authoriz'd, ought to be known *Officers* of Credit or *Officers* upon Record; and not obſcure *Perſons*, of Ill Fame, nor Diſſolute, nor Poor, *but Reſponcible in Eſtate*, able to make reſtitution, whoſe *Names*, *Habitations*, and *Reputations* were unqueſtioned. *For where the* Informer *is Non-ſuit or overthrown, the Court ſhall aſſign Coſts to the Defendant, to be immediately levyed by Execution iſſuing out of the ſame Court.* Wingates Abridg. tit. Infor. on Stat. 18 Eliz. 5. See the Stat. § 3.

Obſerve further what Sr. *John Forteſcue* ſaith in this Caſe in his ſaid Book, in Commendation of the Laws of *England*, Chap. 28.

"Verily no Man can be ſafe in Body or Goods whom his Ad-"verſary

[illegible] every case, with two unknown wit-
[illegible] own Choosing and bringing forth, &c.—
"But such Mischief and Inconvenience cannot be wrought by
"Witnesses that make their Depositions in the presence of 12
"Credible Men, Neighbours to the Deed that is presently in
"Question, and to the Circumstances of the same, which also
"know the Manners and Conditions of the same Witnesses,
"specially, If they be nigh dwellers, and know also whether
"they be Men worthy to be Credited or no.

Edward Waterhouse Esq; Commentary on *Fortescue*, 1663. Licensed by the Judges, *Hale*, *Windham*, *Bridgman*, *Atkins*, *Twisden*, *Turner*, *Hide*, and four others, Chap. 26. on the word *Ignoti*.

"Witnesses are not taken Hab Nab, as we say, such as no bo-
"dy knows, but are their own Affirmers, whose Condition, Life
"and Way men are unsatisfied in, because Secret and Subdolous
"men never known in their own, nor ever known out of other
"mens way: Nor [*Conductitij*] Bought and Made Witnesses—
"so that Acceptance of Rewards being Punishable, the Law
"has done wisely to see that Witnesses be not *Conductitij*, such as
"either Need for want of Fortune, and will take for Covetise any
"Gratification to elude Justice, and become False. [*Vagi incon-*
"*stantes*]—Loose Persons—carryed up and down by the Impe-
"tuosity of Vice to this and that, without settlement in any thing.
"The Laws Wisdom is apparent, in that it has excluded **Neces-**
"**sitous Persons**, and such as have habituated themselves to
"**Shift** and **Shark**, from all Credit, as Witnesses.

THE END.

355117